

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RED LION HOTELS FRANCHISING,
INC.,

NO. CV-08-262-EFS

Plaintiff,

PROTECTIVE ORDER

v.

MAK, LLC; MAHMOUD KARIMI
a/k/a Mike Karimi and JANE
DOE KARIMI, individually and
as a marital community,

Defendants.

On September 23, 2009, the parties filed a Stipulation and [Proposed] Protective Order. (Ct. Rec. [12](#).) Based upon the parties' Stipulation, the following protective order is **HEREBY ENTERED**:

1. Nondisclosure of Sensitive Information: All documents, information, or tangible items produced or furnished by a party during this litigation, which are designated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" shall not be given, shown, made available, discussed, or otherwise communicated in any manner ("disclosed"), either directly or indirectly, to any person not authorized to receive the

1 information under the terms of this Protective Order. The parties agree
2 to designate information as "CONFIDENTIAL-ATTORNEYS' EYES ONLY" on a
3 good-faith basis and not for purposes of harassing the receiving party
4 or for purposes of unnecessarily restricting the receiving party's access
5 to information concerning the lawsuit.

6 In designating information as "CONFIDENTIAL," such designation shall
7 be made only as to proprietary information relating to highly sensitive
8 information, including financial and market data. In designating
9 information as "CONFIDENTIAL-ATTORNEYS' EYES ONLY," such designation
10 shall be made only as to proprietary information relating to highly
11 sensitive information, including financial and market data. Information
12 or material that is available to the public, or that has been disclosed
13 to a third party without any restriction or other obligation to keep such
14 information confidential, shall not be so classified.

15 **2. Designation of Documents as Confidential:** Documents or
16 tangible items shall be designated confidential within the meaning of
17 this Protective Order in the following ways:

18 (a) In the case of documents and the information contained therein, by
19 placing on the document the legend "CONFIDENTIAL" or "CONFIDENTIAL-
20 ATTORNEYS' EYES ONLY."

21 (b) In the case of interrogatory answers and the information contained
22 therein, by placing on the pages containing the confidential information
23 the legend "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY."

24 (c) In the case of tangible items, by visibly marking the item or, if
25 not practical, by marking the container or a tag attached to the item,
26 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY."

1 (d) Documents and tangible items may also be labeled with the legend
2 "Confidentiality Designation Made By Counsel, Civil Action No. CV-08-262-
3 EFS."

4 (e) In producing original files and records for inspection, no marking
5 need be made by the producing party in advance of the inspection. For the
6 purposes of the inspection, all documents produced shall be considered
7 as marked "CONFIDENTIAL-ATTORNEYS' EYES ONLY." After the inspecting
8 party selects documents for copying, the producing party shall mark as
9 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" the copies of the
10 documents that contain confidential information prior to producing the
11 copies to the inspecting party.

12 **3. Use and Designation of Confidential Information During**
13 **Depositions:** If depositions require the disclosure of confidential
14 information, counsel for the witness or party producing such information
15 may identify, on the record, the portion of the deposition which counsel
16 believes may contain confidential information. If such designation is
17 made, that portion of the deposition will be taken with no one present
18 except those persons who are authorized to have access to such
19 confidential information in accordance with this Protective Order, and
20 the reporter. Subject to the terms hereof, "CONFIDENTIAL" or
21 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" information may be disclosed by a
22 receiving party in a deposition, to the extent that its use is necessary,
23 only at the deposition(s) of:

24 (a) the present employees, directors or officers of the producing party;
25 (b) an author, addressee, or other person indicated as a recipient of
26 a document containing the information;

1 (c) a person identified through discovery or investigation or by the
2 deponent in his or her deposition as an author or recipient of the
3 information (without prior disclosure of the specific confidential
4 information). Prior to any disclosure under subparagraph (c), notice must
5 be given to the producing party of the specific information so that it
6 has a fair opportunity to object to the disclosure. Notice may be given
7 at the time of the deposition. However, if an objection is made, the
8 confidential information may not be disclosed to the deponent until the
9 objection is resolved by the parties or the Court decides disclosure is
10 warranted. Any party may bring before the Court the question of whether
11 confidential information may be disclosed to the deponent;
12 (d) an independent advisor, consultant or expert otherwise qualified
13 under this Protective Order to receive such information; or
14 (e) any person for whom prior authorization is obtained from the
15 producing party or the Court.

16 **4. Period For Designation Of Deposition Transcripts As**

17 **Confidential:** Regardless of whether notice was given at the deposition,
18 deposition transcripts shall be considered "CONFIDENTIAL-ATTORNEYS' EYES
19 ONLY" for thirty (30) days after delivery of transcripts to the parties.
20 Each party shall have until thirty (30) days after receipt of the
21 deposition transcript to inform the other parties to the action of the
22 portions of the transcript (by specific page and line reference) to be
23 designated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY." The
24 right to make such designation shall be waived unless made within the
25 thirty (30) day period, subject to the inadvertent disclosure provisions
26 of paragraph 10. The thirty (30) day period may be reduced by agreement

1 of the parties and any requests for reduction of such time period will
2 not be unreasonably refused.

3 **5. Filing of Confidential Information With the Court:** All
4 "Confidential" and "Confidential-Attorneys' Eyes Only" information filed
5 with the Court, and any pleadings or other filed papers disclosing such
6 information, shall be filed under seal upon obtaining authorization by
7 the court to do so by filing a stipulation and proposed order or a
8 motion regarding the specific documents at issue.

9 **6. Persons Entitled to Review "Confidential-Attorneys' Eyes Only"**
10 **Information:** Disclosure of "CONFIDENTIAL-ATTORNEYS' EYES ONLY" documents
11 or information, including summaries thereof, but not including documents
12 with the confidential portions redacted to the extent only a portion or
13 portions of a document have been designated as "CONFIDENTIAL-ATTORNEY
14 EYES ONLY," shall be limited to:

15 (a) outside counsel who have appeared in this matter and their partners,
16 associates, paralegals, secretaries, and office assistants;

17 (b) judges, magistrates, any special master appointed by the Court, law
18 clerks, and clerical personnel of this Court or any other court where
19 discovery or other matters pertaining to this action might lie, as well
20 as any court to which an appeal in this action might lie;

21 (c) independent consultants or experts, not employees, directors or
22 officers of the parties, retained by any of the parties and/or their
23 counsel to consult or testify in the case;

24 (d) persons entitled to receive the information pursuant to Paragraph
25 3 above;

26 (e) outside vendors who perform photocopying, microfiching, computer

classification or similar clerical functions, but only so long as necessary to perform those services; and

(f) court reporters, persons operating video equipment in depositions, and other person engaged in preparing transcripts of testimony or hearings for this action.

In the event that counsel believes there is a need to disclose documents or information marked "CONFIDENTIAL-ATTORNEYS' EYES ONLY" with persons other than those permitted to receive such documents or information by this paragraph, upon request of such counsel, counsel for the party producing such documents or information shall confer with such counsel at the earliest opportunity for the purpose of resolving such request in good faith. In the event counsel cannot reach an agreement, any party may bring before the Court the questions of whether disclosure of the confidential information to such person is warranted.

7. Persons Entitled To Review "Confidential" Information:

Disclosure of information designated as "CONFIDENTIAL," including summaries thereof, shall be limited to:

(a) the persons and entities identified in Paragraphs 3 and 6; and
(b) no more than three employees or officers of the nonproducing party who are assisting counsel in litigating this matter and who have a need to know the information.

In the event that counsel believes there is a need to disclose documents or information marked "CONFIDENTIAL" with persons other than those permitted to receive such documents or information by this paragraph 7, upon request of such counsel, counsel for the party producing such documents or information shall confer with such counsel at the earliest

1 opportunity for the purpose of resolving such request in good faith. In
2 the event counsel cannot reach an agreement, any party may bring before
3 the Court the questions of whether disclosure of the confidential
4 information to such person is warranted.

5 **8. Procedure For Disclosure Of Confidential Information:** Before
6 the nonproducing party discloses any information subject to this
7 Protective Order to any employee or officer of the non-producing party,
8 or to any consultant or expert retained by the non-producing party,
9 counsel for the party disclosing the information shall obtain a written
10 declaration, in the form attached hereto as Exhibit A, from each person
11 to whom disclosure is to be made, acknowledging that any document,
12 information or tangible item that has been designated as confidential is
13 subject to this Protective Order, that the person has read this
14 Protective Order, that such person agrees to comply with, and be bound
15 by, this Protective Order, and that such person is aware that contempt
16 sanctions may be entered for violation of this Protective Order. Except
17 as provided for in paragraph 3, the declarations shall be provided to
18 opposing counsel ten (10) days in advance of the first disclosure of any
19 confidential information to such person. For each consultant or expert
20 retained by the non-producing party, a CV or resume of the consultant or
21 expert shall also be provided to opposing counsel ten (10) days in
22 advance of the first disclosure of any confidential information to such
23 consultant or expert. If no objection is made to such person receiving
24 confidential information within such ten (10) day period, then
25 confidential information may be disclosed to such person. If objection
26 is made, confidential information may not be disclosed to such person

1 until the objection is resolved by the parties or the Court. Any party
2 may bring before the Court the question of whether the confidential
3 information may be disclosed to such person. All signed declarations
4 shall be maintained through the conclusion of this action by the party
5 obtaining the declaration.

6 **10. Inadvertent Disclosure Of Confidential Information:** If,
7 through inadvertence, a producing party provides confidential information
8 without marking the information as "CONFIDENTIAL" or "CONFIDENTIAL-
9 ATTORNEYS' EYES ONLY" information, or if a producing party, through
10 inadvertence, fails to designate deposition testimony within the thirty
11 (30) day period as provided in paragraph 4, the producing party may
12 subsequently inform the receiving party of the "CONFIDENTIAL" or
13 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" nature of the disclosed information
14 or testimony, and the receiving party shall treat the disclosed
15 information and/or testimony as "CONFIDENTIAL" or "CONFIDENTIAL-
16 ATTORNEYS' EYES ONLY" information upon receipt of written notice from the
17 producing party.

18 **11. Inadvertent Disclosure Of Privileged or Work Product**
19 **Information:** If, through inadvertence, a producing party provides
20 information protected by the attorney-client privilege or any other
21 privilege, or information protected from discovery by the work product
22 doctrine, the producing party may subsequently inform the receiving party
23 of the nature of the disclosed information, and, upon receipt of written
24 notice from the producing party, the receiving party shall return the
25 information and all copies thereof to the producing party and shall not
26 use the information in any way.

1 **12. Limitation on Applicability of Order:** This Protective Order
2 shall have no effect upon, and its scope shall not extend to, any party's
3 use of its own information and/or information that was not received from
4 a producing party pursuant to this Protective Order. The restrictions
5 set forth in this Protective Order will not apply to information that is
6 known to the public before the date of its transmission to the receiving
7 party, or that becomes known to the public after the date of its
8 transmission to the receiving party, provided that such information does
9 not become publicly known by any act or omission of the receiving party,
10 its employees, or agents which would be in violation of this Protective
11 Order or other law. If such public information is designated as
12 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY," counsel for the
13 receiving party must inform counsel for the producing party of the
14 pertinent circumstances ten (10) days in advance of treating such
15 information as nonconfidential. If no objection is made within such ten
16 (10) day period, then such designated information may be treated as
17 nonconfidential. If an objection is made, the designated information
18 must be treated as subject to this Protective Order until the objection
19 is resolved by the parties or the Court. Any party may bring before the
20 Court the question of whether designated information may be treated as
21 nonconfidential.

22 **13. Use of Confidential Information:** Confidential information
23 received in this litigation shall be used only in connection with this
24 case. The use of such information at trial or hearing in this case shall
25 be subject to such protection, as the Court shall determine.

1 **14. Resolution of Disputes:** Acceptance by a party of any
2 information, document, or thing designated as "CONFIDENTIAL" or
3 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" shall not constitute a concession
4 that the information, document, or thing is confidential. Either party
5 may contest a claim of confidentiality. If any dispute arises with
6 respect to a claim of confidentiality or with respect to any other
7 subject matter under this Protective Order, the parties shall try in good
8 faith to resolve such dispute informally. If agreement cannot be reached
9 between counsel, then the dispute may be presented to the Court by either
10 party by motion or otherwise, and the parties shall continue to treat the
11 material as confidential and to use the material only in the manner
12 authorized by this Protective Order until the Court rules that it may be
13 treated otherwise. In the resolution of such matter, the party
14 challenging the confidentiality designation must present a *prima facie*
15 showing that challenged information was improperly designated. The burden
16 then shifts to the party making the designation to demonstrate that the
17 challenged material was properly designated.

18 **15. Nonwaiver:** This Protective Order shall be without prejudice
19 to the right of any party to oppose production of any information on
20 grounds other than confidentiality. For example, nothing in this
21 Protective Order shall be construed as requiring disclosure of
22 information, documents, or things that are beyond the scope of
23 appropriate discovery in this case. Additionally, nothing in this
24 Protective Order shall affect any matter of attorney-client privilege,
25 work product doctrine, or other privileges or immunities; such matters
26 shall be governed by the applicable law of privilege or immunity.

1 Additionally, any party's designation of any information, document, or
2 thing as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY," or any
3 party's objections or lack of objections thereto, shall not in any way
4 affect or be admissible as to any evidentiary matters; such matters shall
5 be governed by the applicable law of evidence. Also, any party's
6 designation of any information, document, or thing as "CONFIDENTIAL" or
7 "CONFIDENTIAL-ATTORNEYS' EYES ONLY," or any party's objections or lack
8 of objections thereto, shall not in any way affect or be admissible as
9 to any substantive claims and/or defenses that are or may be at issue in
10 this case or any other action, such as claims and/or defenses pertaining
11 to patent rights, trade secrets, and/or proprietary rights; such claims
12 and/or defenses shall be governed by the applicable statute(s) and/or
13 substantive law.

14 **16. Subsequent Modifications of Order:** This Protective Order shall
15 not prevent any party from applying to the Court for relief therefrom,
16 or from applying to the Court for further or additional protective
17 orders, or from agreeing among themselves to modify or vacate this
18 Protective Order, subject to the approval of the Court.

19 **17. Disposition of Documents at Conclusion of Action:** At the
20 conclusion of this action, including any appeals, all "CONFIDENTIAL" and
21 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" information furnished pursuant to
22 this Protective Order, and all copies thereof, shall be returned to the
23 producing attorneys of record, or, at the producing party's option,
24 destroyed by counsel for the receiving party. The provisions of this
25 Protective Order insofar as it restricts the disclosure, communication
26 of, and use of, "CONFIDENTIAL" and "CONFIDENTIAL-ATTORNEYS' EYES ONLY"

1 information produced hereunder shall continue to be binding after the
2 conclusion of this action.

3 **18. Non-party Reliance on Order:** If discovery is sought of a
4 person not a party to this action ("non-party") requiring disclosure of
5 such non-party's confidential information, the confidential information
6 disclosed by such non-party may be designated by the non-party as
7 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" information, as
8 provided under this Protective Order, and will be subject to the same
9 protection and procedures as those governing disclosure of the parties'
10 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" information.

11 **19. Non-party Requests for Information Subject to This Order:** If
12 any party is subpoenaed in another action, served with a demand in
13 another action to which it is a party, or is served by any legal process
14 by one not a party to this action, seeking information that was
15 designated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" by
16 someone other than that party, the party shall give written notice by
17 electronic or facsimile transmission within ten (10) days of receipt of
18 such subpoena, demand, or legal process to the party who designated the
19 information, and shall object to its production to the extent permitted
20 by law, setting forth the existence and terms of this Protective Order.
21 Nothing herein shall be construed as requiring the party or anyone else
22 covered by this Protective Order to challenge or appeal any order
23 requiring production of information subject to the Protective Order, or
24 subject itself to any penalties for noncompliance with any legal process
25 or order, or to seek any relief from this Court.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and distribute copies to counsel.

DATED this 28th day of September 2009.

s/Edward F. Shea

EDWARD F. SHEA

United States District Judge

Q:\Civil\2008\262.protectiveorder.wpd